

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID A. KING, *et al.*,

Plaintiffs,

v.

TIMBER RIDGE TRADING &
MANUFACTURING COMPANY,

Defendant.

Case No. 2:19-cv-01617-RAJ

ORDER GRANTING MOTION TO
DISMISS

I. INTRODUCTION

This matter comes before the Court on Defendant’s motion to dismiss. Dkt. # 32.
For the reasons below, the Court **GRANTS** the motion.

II. BACKGROUND

Plaintiffs David A. King and Maryann E. Voisinet are North Carolina residents.¹
Dkt. # 30 ¶¶ 5.b, 7-8. On October 18, 2018, Mr. King bought a wood-cutting blade for an
angle grinder. *Id.* ¶ 12. He bought the blade on Amazon.com, where the blade was
advertised as being suitable for use on an angle grinder and for “beam notching . . . with
NO kickback!” *Id.* ¶ 13. The Amazon.com listing further emphasized that the blade had
“awesome cutting ability with NO Kick-Back” given its “patented blade concept” and

¹ In response to Timber Ridge’s motion to dismiss, Plaintiffs have not provided a separate sworn declaration testifying to the facts in their Second Amended Complaint. Dkt. # 30. For purposes of this motion, facts alleged in the complaint that are uncontroverted by evidence will be taken as true.

1 “specially-designed tooth layout.” *Id.* According to Plaintiffs, “kickback” is the “sudden
2 forceful recoil that can occur when using a wood-cutting blade on a power saw,” whereby
3 a blade’s teeth grip a piece of wood and “cause[] a sudden jolt of force.” *Id.* ¶ 10.

4 With his angle grinder, Mr. King used the wood-cutting blade to cut a wood beam,
5 and despite the advertisement he claims to have experienced a “substantial kickback.” *Id.*
6 ¶ 14. He lost control of the angle grinder, and the blade severed tendons in two of his
7 fingers. *Id.* Mr. King now claims that he is permanently disabled. *Id.* ¶ 15. His wife,
8 Ms. Voisinet, claims that Mr. King’s disability deprives her of her husband’s ability to
9 “do yard-work, open jars, assist in fixing her car, or provide other marital services” to
10 her. *Id.* ¶ 16.

11 Defendant Timber Ridge Trading & Manufacturing Company (“Timber Ridge”) is
12 a Minnesota corporation. Dkt. # 33 ¶ 4. Timber Ridge contracts with an import-export
13 company in Shanghai, China, to supply products sold under its brand. *Id.* ¶ 5. The goods
14 are shipped from China to Timber Ridge’s only warehouse, in Bloomington, Minnesota.
15 *Id.* ¶ 6. Timber Ridge then sells its products to retailers and wholesalers, like
16 Amazon.com Services, Inc. (“Amazon”), who in turn resell the products to end
17 consumers. *Id.* ¶ 7. Timber Ridge does not sell products directly to consumers. *Id.* The
18 blade that Mr. King allegedly bought on Amazon.com was a Kwiktool USA brand blade;
19 Timber Ridge owns the Kwiktool USA brand. *Id.* ¶¶ 5, 9.

20 Plaintiffs are now suing Timber Ridge for the violation of express and implied
21 warranties, failure to warn, false advertising, and fraud. Dkt. # 30 at 12-13. On April 28,
22 2020, Timber Ridge moved to dismiss Plaintiffs’ Second Amended Complaint for lack of
23 personal jurisdiction. Dkt. # 32. Alternatively, Timber Ridge requests that this case be
24 transferred to Minnesota. *Id.* at 17-20.

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss
27 claims against it for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). Plaintiff has

1 the burden of establishing personal jurisdiction. *CollegeSource, Inc. v. AcademyOne,*
2 *Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). “Where, as here, the defendants’ motion is
3 based on written materials rather than an evidentiary hearing, the plaintiff need only
4 make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”
5 *Id.* The plaintiff cannot “simply rest” on the bare allegations of his or her complaint, yet
6 all “uncontroverted allegations” must be taken as true. *Ranza v. Nike, Inc.*, 793 F.3d
7 1059, 1068 (9th Cir. 2015). Where there are conflicts between parties over statements
8 contained in affidavits, these conflicts must be resolved in the plaintiff’s favor. *Id.*

9 “Federal courts apply state law to determine the bounds of their jurisdiction over a
10 party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed.
11 R. Civ. P. 4(k)(1)(A)). Washington’s long-arm statute, RCW 4.28.185, “extends
12 jurisdiction to the limit of federal due process.” *Shute v. Carnival Cruise Lines*, 783 P.2d
13 78, 82 (Wash. 1989). The due process clause grants the court jurisdiction over
14 defendants who have “certain minimum contacts . . . such that maintenance of the suit
15 does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v.*
16 *Washington*, 326 U.S. 310, 316 (1945).

17 Personal jurisdiction can be found on either of two theories: general jurisdiction
18 and specific jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082,
19 1086 (9th Cir. 2000). A defendant with “substantial” or “continuous and systematic”
20 contacts with a forum state is subject to general jurisdiction. *Id.* On the other hand,
21 “[t]he inquiry whether a forum State may assert specific jurisdiction over a nonresident
22 defendant focuses on the relationship among the defendant, the forum, and the litigation.”
23 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (internal
24 quotations omitted).

25 IV. DISCUSSION

26 Timber Ridge argues that the Court lacks personal jurisdiction under either theory.
27 The Court addresses each type of jurisdiction in turn.

1 **A. General Jurisdiction**

2 Unless the facts present “an exceptional case,” a corporation is typically “at home”
3 and subject to general jurisdiction in the state where it is incorporated or has its principal
4 place of business.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014). Timber
5 Ridge is not “at home” in Washington, and the facts here are far from “exceptional.”
6 Washington is not the state where Timber Ridge is incorporated or where it has its
7 principal place of business. Timber Ridge is incorporated in Minnesota. Dkt. # 33 ¶ 4.
8 Its principal—and only—place of business is in Minnesota. *Id.* And Timber Ridge’s
9 relationship with Washington is far from “continuous” and “systematic.” It has no
10 offices, no employees, no bank accounts, no phone numbers, and no local agent for
11 service of process in Washington. *Id.* ¶ 16. It does not own or rent any property in
12 Washington, nor has it held any meetings in Washington. *Id.* ¶¶ 17-18. None of its
13 employees have travelled to Washington in the course of their employment. *Id.* ¶ 18.

14 In their complaint, Plaintiffs concede that Timber Ridge is incorporated in
15 Minnesota and that it has its principal place of business there. Dkt. # 30 ¶ 9. Yet they
16 allege that Timber Ridge has “systematic and continuous contacts with Washington.”
17 Dkt. # 30 ¶ 2.b. They offer no evidence or facts to support this allegation. And in their
18 response brief, they do not address general jurisdiction at all. *See generally* Dkt. # 35.
19 Plaintiffs’ conclusory allegation of “systematic” and “continuous” contacts is insufficient
20 to find Timber Ridge “at home” in Washington. The Court does not have general
21 jurisdiction over Timber Ridge.

22 **B. Specific Jurisdiction**

23 For specific jurisdiction, courts apply a three-part test: (1) the defendant has either
24 purposefully directed his activities toward the forum or purposely availed himself of the
25 privileges of conducting activities in the forum, (2) the plaintiff’s claims arise out of the
26 defendants’ forum-related activities, and (3) exercise of jurisdiction is reasonable.

27 *Axiom*, 874 F.3d at 1068.

1 The plaintiff bears the burden of satisfying the first two prongs. *Schwarzenegger*
2 *v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). In tort cases like this one,
3 the plaintiff must show that the defendant has purposefully directed activities toward the
4 forum. *Id.* at 802. If the plaintiff meets that burden, the court must then evaluate whether
5 the claim at issue arose from the defendant’s forum-related conduct. *Menken v. Emm*,
6 503 F.3d 1050, 1058 (9th Cir. 2007). That is, the plaintiff must show that it would not
7 have suffered an injury “but for” each defendant’s forum-related conduct. *Id.* The
8 burden would then shift to the defendant under prong three to make a “compelling case”
9 that the exercise of jurisdiction would not be reasonable. *Id.*

10 Plaintiffs here do not make it past step one of the specific jurisdiction analysis.
11 They fail to show that Timber Ridge purposefully directed its activities toward
12 Washington.

13 **i. Purposeful Direction**

14 “A purposeful availment analysis is most often used in suits sounding in contract.
15 A purposeful direction analysis, on the other hand, is most often used in suits sounding in
16 tort.” *Schwarzenegger*, 374 F.3d at 802. Here, Plaintiffs are suing Timber Ridge for the
17 violation of express and implied warranties, failure to warn, false advertising, and fraud,
18 Dkt. # 30 at 12-14, all claims sounding in tort. Therefore, a purposeful direction analysis
19 applies.

20 Plaintiffs disagree. They say that the purposeful direction analysis is inapplicable,
21 as made clear by the Ninth Circuit’s decision in *Freestream Aircraft (Bermuda) Ltd. v.*
22 *Aero Law Group*, 905 F.3d 597, 605 (9th Cir. 2018). Dkt. # 35 at 4-8. According to
23 Plaintiffs, the purposeful direction analysis is merely an “alternate path for finding
24 jurisdiction” when a defendant did not transact any business or did not commit any
25 tortious acts in a forum state. *Id.* at 4-5. But here, Plaintiffs say, Timber Ridge has in
26 fact conducted business in Washington, the forum state, because it has contracted with
27 Amazon, a third-party Washington resident. *Id.* Given that “jurisdiction in this case is

1 based on in-forum activity,” Plaintiffs conclude, “purposeful direction does not apply.”
2 *Id.* at 5.

3 Plaintiff’s reasoning is unconvincing. Nothing in *Freestream* suggests that the
4 purposeful direction analysis is inappropriate here. In *Freestream*, the Ninth Circuit
5 explained that, in tort cases, *where* a tort was committed is significant. 905 F.3d at 605.
6 The court explained that personal jurisdiction is usually satisfied when an intentional tort
7 is committed within a forum state. *Id.* at 606. On the other hand, when dealing with
8 “out-of-forum tortfeasors,” courts must apply the purposeful direction analysis by using
9 the “effects” test outlined in *Calder v. Jones*, 465 U.S. 783, 789-90 (1984).

10 The torts at issue here are the violation of express and implied warranties, failure
11 to warn, false advertising, and fraud. If these torts were in fact committed, they were not
12 committed in Washington, where Mr. King was not injured and where Timber Ridge is
13 not incorporated, has no place of business, and has no operations. If Timber Ridge
14 committed these torts, it must have done so as an “out-of-forum tortfeasor,” unlike the
15 defendants in *Freestream*, who made defamatory statements in Nevada, the forum state,
16 while they were physically present in Nevada. 905 F.3d at 601-02. The Court will not
17 abandon the purposeful direction analysis simply because Timber Ridge has “form[ed] a
18 contract with a Washington entity like Amazon.com,” Dkt. # 35 at 5, which is not itself a
19 tort. Hence, the purposeful direction analysis applies. The Court must now determine
20 whether Timber Ridge’s out-of-forum actions were directed at Washington.

21 **ii. “Effects” Test**

22 In the purposeful direction inquiry, a court must evaluate whether a defendant
23 undertakes action that occurs outside the forum but is nonetheless directed toward the
24 forum, such as distribution and advertising. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151,
25 1155-56 (9th Cir. 2006). In doing so, courts apply the *Calder* “effects” test, which
26 requires that a defendant (1) commit an intentional act, (2) expressly aimed at the forum
27 state, (3) that caused harm that the defendant knew was likely to be suffered in the forum

1 state. *Schwarzenegger*, 374 F.3d at 803 (citing *Calder*, 465 U.S. at 789-90).

2 **(1) Intentional Act**

3 The Court first considers whether Timber Ridge committed an “intentional act.”

4 “[A]n intentional act is an external manifestation of the actor’s intent to perform an
5 actual, physical act in the real world, not including any of its actual or intended results.”

6 *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 674 (9th Cir. 2012).

7 Based on their complaint, Plaintiffs allege that Timber Ridge “promised in its advertising
8 that the blade had ‘NO Kick-Back’ and was safe to use on an angle grinder.” Dkt. # 30 at

9 7. They further allege that Timber Ridge “knew of the especially dangerous nature of

10 using wood-cutting blades on an angle grinder and willfully misrepresented those

11 dangers.” *Id.* ¶ 17. They suggest that Timber Ridge made fraudulent statements, false

12 claims, and promises about the wood-cutting blade, sold them the blade, and failed to

13 provide adequate warnings. *Id.* at 12-14. If true, these would no doubt be “intentional

14 acts,” satisfying prong one of the effects test.

15 But these intentional acts belong not to Timber Ridge, but to Amazon. The

16 evidence reveals that Timber Ridge did not sell the blade that injured Mr. King; Amazon

17 did. Timber Ridge sells its products directly to retailers and wholesalers, like Amazon,

18 which then resell the products to end consumers. *Id.* ¶¶ 7, 10. Timber Ridge does not

19 sell its products directly to consumers, nor is it a “third-party” seller that fulfills orders

20 placed through Amazon.com. *Id.* ¶ 11. Instead, Amazon purchases products directly

21 from Timber Ridge, takes title and possession of the products, stores the products, and

22 sells and ships the products to end consumers. *Id.*

23 Despite that evidence, Plaintiffs still contend that Amazon’s sale of the wood-

24 cutting blade must be attributed to Timber Ridge. Plaintiffs do not deny that Mr. King

25 bought the blade on Amazon.com. Dkt. # 30 ¶ 12; Dkt. # 35 at 2. Yet they claim,

26 without evidence, that Mr. King bought the blade through “defendant’s Amazon.com

27 listing,” which contained “defendant’s promise” that the blade would have no kickback.

1 Dkt. # 35 at 2. Plaintiffs thereby claim that Timber Ridge itself, not Amazon,
2 “misrepresented [the] extraordinary dangers associated with kickback.” *Id.*

3 Plaintiffs have given the Court no reason to believe that Amazon’s advertisement
4 and sale of the blade at issue must be attributed to Timber Ridge. Timber Ridge’s
5 evidence plainly contradicts Plaintiffs’ bare allegations that Timber Ridge, not Amazon,
6 sold and advertised the blade to Mr. King.

7 It is Timber Ridge’s, not Amazon’s, contacts with Washington that are significant.
8 The specific jurisdiction inquiry focuses on the “relationship among the defendant, the
9 forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Keeton v.*
10 *Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). The relationship must arise out of
11 contacts that the “defendant *himself*” creates with the forum state. *Id.* (emphasis in
12 original) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). “[A]
13 defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient
14 basis for jurisdiction.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068
15 (9th Cir. 2017) (quoting *Walden*, 571 U.S. at 286).

16 What “intentional acts” should be ascribed to Timber Ridge, then, is unclear. The
17 only act that Plaintiffs present is the entering into a contract with Amazon, a third-party
18 Washington resident. Dkt. # 35 at 2. This “intentional act,” however, is unrelated to
19 Plaintiffs’ tort claims of the violation of express and implied warranties, failure to warn,
20 false advertising, and fraud.

21 (2) Expressly Aimed at the Forum State

22 Even if the Court were to assume that Amazon’s actions could be attributed to
23 Timber Ridge for purposes of specific jurisdiction, Plaintiffs would not pass the second
24 prong of the “effects” test. Plaintiffs fail to show how the sale and advertisement of the
25 blade were expressly aimed at Washington. For example, Plaintiffs have not shown that
26 they, as residents of Washington were “individual[ly] target[ed]” in the forum state,
27 which would be relevant to a specific jurisdiction inquiry. *Axiom*, 874 F.3d at 1069-70.

1 Indeed, Plaintiffs are not residents of the forum state at all.

2 At bottom, the significant facts are these: Plaintiffs are North Carolina residents,
3 one of whom was injured by a blade. Dkt. # 30 ¶¶ 5.b, 7, 14-15. The blade was bought
4 in North Carolina; the injury occurred in North Carolina. Id. ¶ 1. The blade was
5 manufactured in China but imported by Timber Ridge to Minnesota. Dkt. # 33 ¶¶ 5-6.
6 The only connection to this forum is that Amazon, a non-party Washington resident,
7 presumably bought the blade from Timber Ridge, took possession and title to it, and then
8 resold it to Mr. King. Id. ¶¶ 8, 10-12; Dkt. # 30 ¶ 12. Besides Timber Ridge’s business
9 relationship with a Washington resident, Timber Ridge’s only connection to this forum is
10 that nearly three years ago, on February 22, 2018, it shipped four saw blades to an
11 Amazon fulfillment center in Dupont, Washington. Dkt. # 33 ¶ 14. The blade that
12 injured Mr. King was not in that shipment, and that was Timber Ridge’s only shipment to
13 Washington from August 2015 to November 2019. Id.

14 These facts are too attenuated to find that Timber Ridge “expressly aimed” its
15 “intentional acts” at this forum. In sum, Plaintiffs fail the *Calder* “effects” test and thus
16 fail prong one of the specific jurisdiction analysis.

17 V. CONCLUSION

18 For the reasons stated above, the Court **GRANTS** Timber Ridge’s motion to
19 dismiss for lack of personal jurisdiction. Dkt. # 32. Because the Court is dismissing this
20 action, it need not consider Timber Ridge’s alternative request for transfer of venue.

21 DATED this 6th day of January, 2021.

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26 The Honorable Richard A. Jones
27 United States District Judge